

JAN 18 2006

A BILL FOR AN ACT

RELATING TO A SURCHARGE TAX ON THE VALUE OF IMPROVEMENTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that the fee simple
2 ownership of commercial and industrial land in Hawaii will
3 continue to be held by a very small group of estates, trusts,
4 and individuals. This concentration of ownership has and will
5 continue to facilitate the practice by these landowners of
6 leasing, rather than selling, their land.

7 Historically, these landowners have entered into ground
8 lease agreements with persons and corporations that require the
9 lessees to construct improvements on the land upon which
10 intrastate and interstate commerce is conducted. These
11 improvements include warehousing facilities, office and
12 industrial parks and buildings, shopping centers, parking lots,
13 automobile dealerships, hotels, and numerous other types of
14 commercial and industrial buildings and facilities and their
15 infrastructure.

16 During the term of these lease agreements, the landowners
17 require that their ground lease lessees pay all property taxes
18 due on the land and any other taxes that may become due.



1 Lessees also pay each and every cost associated with the
2 development and improvement of the land, including buildings,
3 structures, and required infrastructure.

4 Upon the expiration of these lease agreements, any and all
5 of the improvements revert to the full and free ownership and
6 control of the landowner lessors. These landowners are thus
7 enriched through the capture of tax-exempt-on-receipt assets.
8 These landowners are then free to use and lease to other third
9 parties both the land and its improvements. No tax liability
10 accrues to these landowners until the lands and its improvements
11 are sold in fee simple to a third party.

12 The legislature finds that these landowners and lessors are
13 enriched in very substantial economic terms upon these
14 reversions. Further, the legislature finds that the state
15 treasury has been retrospectively and will be prospectively
16 unfairly deprived of hundreds of millions of dollars of
17 collectable tax revenues not levied upon the improvements at the
18 time of their receipt, and that only the landowners and lessors
19 are benefited by this deprivation.

20 The purpose of this Act is to remedy the unfair deprivation
21 of tax revenues that has been and is being suffered by the state



1 treasury and the vast majority of the working and retired
2 taxpayers of the State.

3 SECTION 2. The Hawaii Revised Statutes is amended by
4 adding a new chapter to be appropriately designated and to read
5 as follows:

6 "CHAPTER

7 TAXATION OF REAL PROPERTY LEASE CONTRACTS

8 § -1 **Definitions.** As used in this chapter, unless the
9 context clearly requires otherwise:

10 "Aggregate holdings" means the cumulative number of square
11 feet of commercial and industrial property owned by a lessor in
12 the State.

13 "Expiration" means the date or time at which the lease or
14 ground lease expires under the terms of the lease.

15 "Fair market value" means the money value determined to be
16 the tax assessed value of improvements as the same is derived by
17 the various county real property taxing authorities.

18 "Fee owner," "landowner," "fee simple owner," "beneficiary
19 landowner," "lessor," and "fee simple lessor" mean the lawful
20 fee simple owner, heirs, successors, assigns, and subsidiaries
21 of commercial or industrial real property located in the State,
22 provided that the owner has combined aggregate holdings of at



1 least 100,000 square feet of property and which property has
2 been or is being leased to a third party ground lease lessee.

3 "Infrastructure" means above ground and underground
4 improvements that are made to provide access and services to
5 structures constructed or contemplated to be constructed on
6 leased property.

7 "Lease" and "ground lease" mean a document that enables the
8 lease of real property, improved or unimproved, to a ground
9 lease lessee for a period that exceeds twenty years.

10 "Lessee" and "ground lease lessee" mean an entity or person
11 that leases commercial or industrial property from the fee owner
12 lessor of the property.

13 "Lien" means the placement and recordation of a security
14 interest by the State upon real property.

15 "Public education system" means the public schools funded
16 by the State.

17 "Reverted improvements" mean any structures and any
18 infrastructure that revert to a lessor upon the natural
19 expiration of a lease.

20 "Structures" mean a building or buildings, of any
21 dimension, or any other improvements that are constructed on
22 leased property.

1 "Surcharge tax" means a tax levied by the State on a
2 transaction under this chapter.

3 "Taxable basis" means the fair market value of commercial
4 or industrial property on the date upon which a reverted
5 improvement is acquired by a lessor.

6 § -2 **Rules.** The department of taxation shall adopt
7 rules pursuant to chapter 91 as necessary to implement this
8 chapter.

9 § -3 **Applicability.** This chapter shall apply to all
10 commercial and industrial ground leases that were in existence
11 on or before January 1, 1980.

12 § -4 **Priority.** In the event that this chapter conflicts
13 with any other law, this chapter shall prevail.

14 § -5 **Surcharge tax.** In the tax year of the invocation
15 of any reversion clause in any commercial or industrial ground
16 lease of land at the expiration of a lease, the beneficiary
17 landowner or fee simple lessor of the lease shall immediately
18 pay into the treasury of the State a surcharge tax in an amount
19 equal to one hundred per cent of the fair market value of all
20 improvements located upon the subject property. Under no
21 circumstances shall the surcharge tax be due or paid by any
22 lessor landowner unless the lessor, itself or through its



1 agents, heirs, assigns or subsidiaries, owns more than one
2 hundred thousand square feet of aggregate holdings of commercial
3 or industrial real property in the State.

4 **§ -6 Surcharge tax added to basis.** Any surcharge tax
5 paid and collected hereunder shall accrue to or be calculated by
6 a beneficiary landowner or lessor as an additive to the taxable
7 basis to the property used to determine the amount of tax due
8 and payable upon the subsequent sale of the reverted
9 improvements.

10 **§ -7 Surcharge tax lien.** Any and all surcharge taxes
11 due and unpaid hereunder shall create a lien on the subject
12 improvements and on the land thereunder in favor of the State.

13 **§ -8 Surcharge tax dedicated to public education and**
14 **affordable housing.** All surcharge tax funds collected under
15 this chapter shall be dedicated in their entirety and
16 appropriately budgeted by the legislature to support the funding
17 of the public education system and publicly sponsored affordable
18 housing opportunities for residents of the State."

19 SECTION 3. This Act shall take effect upon its approval.

20

INTRODUCED BY:

Report Title:

Surcharge Tax on the Value of Real Property Improvements

Description:

Imposes a surcharge tax on the value of improvements to real property subject to reversion in a lease of commercial or industrial property. Requires the tax proceeds to be dedicated to public education and affordable housing.

